

**MINUTES FOR THE COURT OF APPEAL  
STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT**

**November 10, 2004**

DIVISION ONE

B166693      People                                  (Not for Publication)  
v.  
Reggie Mallard

We vacate the sentences imposed on the gang enhancements, and remand for the court to resentence Mallard as described in section VI. Thereafter, the trial court should prepare an amended abstract of judgment and forward it to the Department of Corrections. In all other respects, we affirm the judgment.

Ortega, Acting P.J.

I concur: Mallano, J.  
I concur in the judgment only: Vogel (Miriam A.), J.

B173974      Curtis T.      (Certified for Publication)  
v.  
The County of Los Angeles

We reverse the judgment (order of dismissal) and direct the trial court to enter a new order sustaining the demurrer with leave to amend. Plaintiff is awarded costs.

Ortega, J.

We concur: Spencer, P.J.  
Mallano, J.

November 10, 2004 (Continued)

DIVISION THREE

Court convened at 11:00 a.m.

Present: Klein, P.J., Kitching, J., Aldrich, J. and Valorie Gray, Deputy Clerk.

Each of the following:

B174384 Children and Family Services v. Sharon K., et al.

B170727 People v. Ferrill

B172434 People v. Demetrius C.

B172320 People v. Avila

Argument waived, cause submitted.

B170149      Washington Mutual  
                 v.  
                 Cen Fed, Ltd., et al.

Merits:

Argued by James S. Cooper for appellant and by Christopher P. Leyer for respondents. Cause submitted.

B164790      Lindbergh, etc., et al.  
                 v.  
                 Muscle Marketing U.S.A., Inc., et al.

Appearance by Catherine Rowlett for appellants and by Miranda Kolbe for respondents. Cause submitted.

B165415      Lindbergh, etc., et al.  
                 v.  
                 Muscle Marketing U.S.A., Inc., et al.

Merits:

Argued by Catherine Rowlett for appellants and by Miranda Kolbe for respondents. Cause submitted.

Court adjourned at 11:58 a.m.

November 10, 2004 (Continued)

### DIVISION THREE (Continued)

[illegible]

The appeal is dismissed.

Klein, P.J.

We concur:   Croskey, J.  
                      Kitching, J.

B175133 People (Not for Publication)  
v.  
Wayne Anthony Nellums

The appeal is dismissed.

Klein, P.J.

We concur:   Kitching, J.  
                      Aldrich, J.

B174530      People                                  (Not for Publication)  
v.  
Larry Earl Williams

The judgment is affirmed.

Klein, P.J.

We concur:   Croskey, J.  
                      Kitching, J.

DIVISION THREE (Continued)

B167250      Edward Saedi                      (Not for Publication)

v.  
Fred F. Kriz, et al.

The judgment is affirmed. Respondent(s) to recover costs.

Croskey, J.

We concur:   Klein, P.J.  
                 Aldrich, J.

B166819      Federation of Hillside and Canyon Assoc., et al.      (Not for Publication)

v.  
City of Los Angeles, et al.

The judgment is affirmed. Respondent(s) to recover costs.

Croskey, Acting P.J.

We concur:   Kitching, J.  
                 Aldrich, J.

B169756      People                                      (Not for Publication)

v.  
John Michael Lopez

The judgment is affirmed.

Croskey, J.

We concur:   Klein, P.J.  
                 Aldrich, J.

### DIVISION THREE (Continued)

B175527 State Farm Mutual Automobile Insurance Co. (Certified for Publication)  
v.  
Superior Court, Los Angeles County  
(Balen, r.p.i.)

The petition for writ of mandate is granted and a peremptory writ shall issue directing the trial court to vacate its order of March 30, 2004, and enter a new and different order denying real party in interest Balen's petition to compel arbitration. The order to show cause issued June 9, 2004 is discharged. State Farm is to recover its costs.

Croskey, J.

We concur: Klein, P.J.  
Aldrich, J.

DIVISION FOUR

B169757 People (Not for Publication)  
v.  
Carpenter

The judgment is modified by striking one use enhancement from each of counts 1 and 2 and one prior prison term enhancement arising from the 1990 robbery conviction, and, as modified, the judgment is affirmed. The superior court is directed to prepare an amended abstract of judgment accordingly.

Grimes, J. (Assigned)

We concur: Epstein, P.J.  
Curry, J.

November 10, 2004 (Continued)

## DIVISION FOUR (Continued)

B169860 People (Not for Publication)  
v.  
Shayan P.

The order of disposition is reversed and the case remanded the juvenile court for further proceedings in keeping with the views expressed in this opinion. If that court concludes that a breach of the plea agreement occurred, the court is directed to vacate the plea of no contest if appellant so elects. If the court concludes, however, that no breach of the plea agreement occurred, the order of disposition is to be reinstated. Appellant would then be permitted to again file an appeal in order to address the issues that have not been resolved on the merits in this opinion.

Curry, J.

We concur: Epstein, P.J.  
Grimes, J. (Assigned)

B172600      People  
v.  
Winslow

Filed order denying petition for rehearing.

DIVISION FIVE

B173970      Joan Hawley-McGrath      (Not for Publication)  
v.  
General Trailer Park Associates

The judgment is affirmed. Respondent(s) to recover costs.

Turner, P.J.

We concur: Grignon, J.  
Armstrong

DIVISION FIVE (Continued)

B172197      Victoria Lavetts                      (Not for Publication)  
                 v.  
                 Matthew Cutter

The judgment is affirmed. Respondent(s) to recover costs.

Grignon, J.

We concur:   Turner, P.J.  
                 Armstrong, J.

B168014      People    (Not for Publication)  
                 v.  
                 Wayne Keith Henry

The abstract of judgment shall be amended to reflect 675 days of presentence custody credits (451 days actual plus 224 days good time/work time). The trial court shall also ensure that the abstract of judgment accurately reflects the judgment imposed. Namely, the abstract shall reflect that the trial court imposed a concurrent 25-years-to-life sentence on count 2, and that it imposed two five-year enhancements under section 667, subdivision (a)(1). The abstract should delete any reference to an enhancement under section 667, subdivision (a)(1) that was stayed. The clerk of the superior court is directed to amend the abstract of judgment to reflect the modification to defendant's sentence and to forward a certified copy of the amended abstract to the Department of Corrections. The judgment is otherwise affirmed.

Mosk, J.

We concur:   Turner, P.J.  
                 Armstrong, J.

November 10, 2004 (Continued)

DIVISION FIVE (Continued)

B173606      People      (Not for Publication)  
v.  
Stanford B. Chatfield

The judgment is affirmed.

Armstrong, J.

We concur:   Turner, P.J.  
                          Grignon, J.

DIVISION SIX

Court convened at 1:30 P.M.

Present: Gilbert, P.J., Yegan, J., Coffee, J., Perren, J., P. McGill, Chief Deputy Clerk and G. Bents, Deputy Clerk.

Each of the following:

B168011 People v. Davis  
B168446 People v. Guiterrez  
B168477 People v. Castaneda  
B169312 People v. Zavala  
B170224 People v. Campbell  
B170419 People v. Gutierrez  
B170987 People v. Kearns  
B171313 People v. Ruiz  
B171514 People v. Fyffe  
B171884 People v. Marzec  
B172054 People v. Frangie  
B172779 People v. Rhoades  
B174027 People v. Ramos

Argument waived, cause submitted.



DIVISION SIX (Continued)

B172832     People  
              v.  
              Louis

Merits:  
Argued by Kathleen M. Redmond for appellant and by Alan D. Tate,  
Deputy Attorney General, for respondent via video conference. Cause  
submitted.

B172971     People  
              v.  
              Smith

Merits:  
Argued by Richard B. Lennon for appellant and by Yun K. Lee, Deputy  
Attorney General, for respondent via video conference. Cause submitted.

B168322     People  
              v.  
              Utley

Merits:  
Argued by Laini M. Melnick for appellant and by Susan Sullivan Pithey,  
Deputy Attorney General, for respondent via video conference. Cause  
submitted.

B174001     People  
              v.  
              Remalia

Merits:  
Argued by Gerald J. Miller for appellant and by Deborah J. Chuang,  
Deputy Attorney General, for respondent via video conference. Cause  
submitted.

DIVISION SIX (Continued)

B171053     People  
              v.  
              Jimenez

Merits:  
Argued by Raymond L. Girard for appellant and by Corey Robins, Deputy Attorney General, for respondent via video conference. Cause submitted.

B171799     People  
              v.  
              Phillips

Merits:  
Argued by Richard E. Holly for appellant and by Zee Rodriguez, Deputy Attorney General, for respondent via video conference. Cause submitted.

B171853     People  
              v.  
              Dominguez

Merits:  
Argued by Jeffrey Allen Needelman for appellant and by Adrian Tigmo, Deputy Attorney General, for respondent via video conference. Cause submitted.

B173466     People  
              v.  
              Romero

Merits:  
Argued by Christine C. Shaver for appellant and by Lauren E. Dana, Deputy Attorney General, for respondent via video conference. Cause submitted.

Gilbert, P.J. left the bench.

DIVISION SIX (Continued)

B176808     People  
              v.  
              Thompson

Merits:

Argued by Richard B. Lennon for appellant and by Gerald McC. Franklin, Senior Deputy District Attorney, for respondent. Cause submitted.

Gilbert, P.J. returned to the bench.

B172563     In Re: Seymour  
              on  
              Habeas Corpus

Merits:

Argued by Nicholas N. Paul, Deputy Attorney General, for appellant and by Michael Satris for respondent. Cause submitted.

Court recessed at 4:20 P.M.

Court reconvened at 4:30 P.M.

Present: Gilbert, P.J., Yegan, J., Coffee, J., Perren, J., P. McGill, Chief Deputy Clerk and G. Bents, Deputy Clerk.

B173901     People  
              v.  
              Durazo

Merits:

Argued by Michael C. McMahon, Chief Deputy Public Defender, for appellant and by Michael A. Katz, Deputy Attorney General, for respondent via video conference. Cause submitted.

DIVISION SIX (Continued)

B171682     People  
              v.  
              Fernando J.

Merits:  
Argued by Michael C. McMahon, Chief Deputy Public Defender, for  
appellant and by Robert F. Katz, Deputy Attorney General, for respondent  
via video conference. Cause submitted.

Coffee, J. left the bench.

B174703     People  
              v.  
              Duran

Merits:  
Argued by Michelle J. Contois, Senior Deputy District Attorney, for  
appellant and by Susan B. Lascher for respondent. Cause submitted.

Court adjourned at 5:45 P.M.

DIVISION SEVEN

B169696     H.K. Supermarket, Inc.     (Not for Publication)  
              v.  
              Magteec Investment Co.

The judgment is reversed and the case remanded for further proceedings  
consistent with this opinion. Consequently, the judgment awarding  
respondent attorney fees and costs is also reversed. Appellant is entitled to  
recover costs on appeal.

Woods, J.

We concur:    Perluss, P.J.  
                  Johnson, J.

## DIVISION SEVEN (Continued)

B169833 People  
v.  
Sergio B.

Filed order modifying opinion. (No change in the judgment)

B169294      People  
v.  
Gonzalo G.

Filed order denying petition for rehearing.

## DIVISION EIGHT

B169762      People                                  (Not for Publication)  
v.  
*Alvarez*

The judgment is affirmed.

Boland, J.

We concur: Cooper, P.J.  
Rubin, J.

B171356 People (Not for Publication)  
v.  
Reodica

The judgment is affirmed. The trial court is directed to issue an amended abstract of judgment and to correct its minute orders to accurately reflect a one-year term imposed for count seven and a total term of nine years.

Boland, J.

We concur: Cooper, P.J.  
Rubin, J.

DIVISION EIGHT (Continued)

[illegible]

The matter is remanded to the juvenile court with directions to amend the clerk's transcript to reflect that count two, rather than count one, was sustained. Further, appellant's offense is reduced to a battery under section 243, subdivision (b). Finally, condition 15 of appellant's probation is modified to read, "do not associate with anyone known to you to be disapproved of by your mother or probation officer." In all other respects, the judgment is affirmed.

Boland, J.

We concur: Cooper, P.J.  
Rubin, J.

B178779 Zakar et al. (Not for Publication)  
v.  
Superior Court, Los Angeles County  
(Ockert et al., r.p.i.)

The petition for writ of mandate is granted. the respondent court is directed to (1) vacate its order of October 12, 2004, granting the motion of Cassandra Ockert to exclude the Zakars' exhibits form trial, and (2) enter a new and different order either (a) denying the motion, or (b) granting the motion and imposing a lesser sanction that does not include issue or evidentiary sanctions. Our temporary stay order of October 28, 2004, is hereby vacated. The Zakars are entitled to recover their costs in this writ proceeding. (Cal. Rules of Court, rule 56.4.) This opinion is final forthwith as to this court. (Ca. Rule of Court, rule 24(b)(3))

Flier, J.

We concur: Cooper, P.J.  
Boland, J.

November 10, 2004 (Continued)

DIVISION EIGHT (Continued)

Filed 11/10/04

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION EIGHT

In the Matter of Classification of Terms of  
Office of the Court of Appeal of California,  
Second Appellate District, Division Eight

ENTRY IN MINUTES:  
CERTIFICATE OF  
CLASSIFICATION

We, the undersigned Justices of the Court of Appeal, State of California, Second Appellate District, Division Eight, being the Justices elected at the general election next after the creation of said Division Eight, of the above-entitled courts, at which we had the right to become candidates, do hereby declare and certify, and cause to be entered in the minutes of said court, the following facts:

1. Pursuant to the provisions of section 16, subdivision (a) of article VI of the Constitution of the State of California and section 69107 of the Government Code we did, on the ninth day of November, 2004, so classify ourselves by lot that the term for which one of us has been elected will expire at the end of four years, that the term for one of us at the end of eight years, and the term for one of us at the end of twelve years, and said terms are fixed by the provisions of the Constitution.

2. That the several terms of office, to which we have been elected, as so fixed by the Constitution and so determined by us by lot pursuant to the provisions of said section 16, subdivision (a) of article VI of the Constitution, and section 69107 of the Government Code are as follows, to wit:

The four-year term is that of Presiding Justice Candace D. Cooper.

The eight-year term is that of Associate Justice Paul Boland.

The twelve-year term is that of Associate Justice Laurence D. Rubin.

The twelve-year term is that of Associate Justice Madeleine I. Flier.

In witness whereof we caused the foregoing entry to be made in the minutes of the court and do attest the same this tenth day of November, 2004. We further direct that a duplicate hereof be forthwith filed in the Office of the Secretary of the State of California.

November 10, 2004 (Continued)

DIVISION EIGHT (Continued)

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CANDACE D. COOPER, Presiding Justice

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LAURENCE D. RUBIN, Associate Justice

Filed: November 10, 2004

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PAUL BOLAND, Associate Justice

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JOSEPH A. LANE, Clerk